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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAMON TAM and BRIAN TAYLOR

Appeal 2009-012412
Application 10/800,293
Technology Center 3600

Before MICHAEL W. O'NEILL, STEFAN STAICOVICI, and
GAY ANN SPAHN, *Administrative Patent Judges.*

SPAHN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Ramon Tam and Brian Taylor (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-4, 7, 10, 13-23, 27 and 28, as follows:

> claims 1-4, 7, 10, 13, 18-23, 27, and 28
> under 35 U.S.C. § 102(b) as anticipated by Gress
> (U.S. Patent No. 5,087,013, issued Feb. 11, 1992);

claims 1 and 14-16 under 35 U.S.C. § 102(b) as anticipated by Cunningham (U.S. Patent No. 5,927,745, issued Jul. 27, 1999); and

claim 17 under 35 U.S.C. § 103(a) as unpatentable over Cunningham.

Appellants cancelled claim 12. The Examiner objected to claims 5, 6, 8, 9, and 24-26 as being dependent upon a rejected base claim. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to a collapsible rolling stand for use with a normally horizontally oriented object attached thereto.

Claim 1, reproduced below, with emphasis added, is illustrative of the subject matter on appeal.

> 1. A collapsible rolling stand for use with an elongated normally horizontally oriented object attached thereto, said stand being supported by a ground surface and having a front end portion and a rear end portion, and being capable of being manipulated between open and closed positions, wherein the object is generally vertically oriented when the stand is closed, and wherein the object is generally horizontally oriented when the stand is in its open position, said stand comprising:
>
> a top frame having a generally planar portion being configured to have the object secured thereto, *said top frame planar portion being oriented in a generally horizontal position when said stand is in its open position and a generally vertical position when said stand is moved to its closed position*;
>
> a folding mechanism supporting said top frame, including at least one handle operatively connected to one end portion of a pair of spaced

> apart elongated first members that have opposite end portions that include points that contact the ground surface and a pair of spaced apart second members each having wheels for enabling a user to roll said stand on the ground surface, said first and second members being pivotally connected to one another and *configured so that the weight of the object provides a substantial portion of the necessary force needed to pivot said first and second pairs of members to further separate said forward contact point from said rear wheels and move said stand from said closed position to said open position wherein said top frame planar portion is substantially horizontal.*

OPINION

Anticipation based upon Gress

Appellants contend that Gress does not anticipate independent claims 1, 20, 27, and 28 because it fails to show all elements recited therein and operates substantially differently than the claimed stand. App. Br. 12. More particularly, Appellants contend that Gress's projections (80) prevent the object (12) from reaching a generally vertical orientation (App. Br. 14-15) and that Figure 4 does not show a generally vertical orientation as suggested by the Examiner (Reply Br. 6). Appellants also contend that since Gress's object 12 does not move from a generally vertical orientation object when the stand is in the closed position to a generally horizontal orientation when the stand is in the open position (App. Br. 15), Gress cannot anticipate claims 1, 20, 27, and 28, which recite either that one of the top frame planar portion and the top frame portion is in a generally horizontal position when the stand is in its open position and a generally vertical position when the stand is moved to its closed position (see Claims App'x, claim 1, lines 7-10,

claim 20, lines 8-10, and claim 27, lines 8-10), or else that the first and second members that are configured so that the weight of the object provides a substantial portion of the necessary force needed to . . . move said stand from said closed position to said open position where one of said top frame planar portion, said top frame portion, and said object is substantially horizontal (see Claims App'x, claim 1, lines 16-20, claims 27, lines 16-20, and claim 28, lines 13, 16). Appellants also contend that when Gress's stand is moved from its open position as shown in Figure 2 to its closed position as shown in Figure 3, neither the top frame planar portion nor the top frame portion is in a vertical position. Reply Br. 6.

The Examiner alleges that Gress anticipates independent claims 1, 20, 27, and 28. Ans. 3. The Examiner finds that Gress discloses a stand which can be manipulated between open and closed positions and has a top frame with a generally planar portion (20 or 24) which is generally vertical when the stand is in the closed position and generally horizontal when the stand is in the open position. *Id.* The Examiner also finds that Gress discloses first and second members which are configured such that the weight of an object provides a substantial portion of the force needed to move the stand from the closed to open position where either the top frame planar portion or the object is substantially horizontal. Ans. 3-4. The Examiner alleges that Gress's Figure 4 shows a generally vertical arrangement and that the object can be adjusted to a vertical position. Ans. 7.

We agree with Appellants that Gress fails to anticipate claims 1, 20, 27, and 28. Gress's Figure 2 shows the stand 10 in the open position with the object 12 in a horizontal orientation. Gress's Figure 3 shows the stand 10 once it has been moved from the open position of Figure 2 to a closed

position and the object 12 is still generally horizontally oriented. Thus, the stand 10 of Gress does not meet the recitation of claims 1, 20, and 27 that either the top frame planar portion or the top frame portion is "oriented in . . . a generally vertical position when said stand is moved to its closed position" because Gress's Figure 3 shows the stand when it has been moved from its open position in Figure 2 to its closed position and neither the top frame planar portion nor the top frame portion is oriented in a generally vertical position, but rather is oriented in a substantially horizontal position. Whether or not the frame portion or object 12 on the inclined stand 10 of Gress's Figure 4 meets the claim limitation of being "substantially vertically oriented" as suggested by the Examiner is not relevant because Figure 4 does not show the stand once it has been moved from its open position (Figure 2) to its closed position (Figure 3).

Turning to claim 28, we do not agree with the Examiner that Gress teaches the first and second members 48, 56 being "configured so that the weight of the object provides a substantial portion of the necessary force needed to pivot said first and second members to further separate said forward contact point from said rear wheels and move said stand from said closed position to said open position wherein the object is substantially horizontal." The Examiner has not pointed to any portion of Gress that provides support for the finding that Gress's first and second members 48, 56 are configured so that the weight of the object provides a substantial portion of the force needed to move the stand from the closed position to the open position wherein the object is substantially horizontal, and we can find none. Ans. 3-4 and 5. Upon our review of Gress, we note that Gress states "[e]levating and lowering is achieved through a crank actuated jackscrew

arrangement." Abstract. More particularly, Gress appears to operate by rotating crank member 40 which moves yoke member 24 relative to cross member 20 to displace rollers 26 and pins 28 in order to pivot legs 48, 56. Col. 7, ll. 25-44 and col. 8, ll. 21-30. Thus, it does not appear that the weight of the object 12 provides a substantial portion of the force needed to move the stand 10 from the closed position (Figure 3) to the open position (Figure 2), as called for by claim 28.

In view of the foregoing, we do not sustain the Examiner's rejection of claims 1-4, 7, 10, 13, 18, 19, 27, and 28 under 35 U.S.C. § 102(b) as anticipated by Gress.

Anticipation based upon Cunningham

Appellants contend that Cunningham fails to anticipate claim 1 because it does not teach or suggest that "said top frame planar portion [is] oriented in a generally horizontal position when said stand is in its open position and a generally vertical position when said stand is moved to its closed position" and "first and second members . . . configured so that the weight of the object provides a substantial portion of the necessary force needed to pivot said first and second pairs of members to further separate said forward contact point from said rear wheels and move said stand from said closed position to said open position wherein said top frame planar portion is substantially horizontal." App. Br. 17-18.

The Examiner alleges that Cunningham anticipates claim 1. In response to Appellants' arguments that Cunningham does not show the object in a vertical orientation, the Examiner notes that the claim only recites that the object is generally vertically oriented and that the stand of

Cunningham is capable of having the object in a generally vertical orientation by lifting the stand onto its wheels for transport. Ans. 7-8.

We agree with Appellants that Cunningham does not anticipate claim 1. Cunningham clearly shows the stand 10 in an open position in Figure 3 and any object attached to the top frame would be horizontally oriented. Figure 4 of Cunningham clearly shows the stand 10 when it has been moved from its open position in Figure 3 to its closed position and any object attached to the top frame would still be horizontally oriented. Although it may be true that the stand 10 could be tipped up onto its wheels so that then any object attached to the top frame would be vertically oriented, the claim language clearly recites the orientation of the object when the stand is moved from its open position to its closed position and the stand of Cunningham does not meet claim 1's language.

In view of the foregoing, we do not sustain the Examiner's rejection of claims 1 and 14-16 under 35 U.S.C. § 102(b) as anticipated by Cunningham. Since the rejection of claim 17 is based upon the same erroneous interpretation of Cunningham as was used to reject claim 1, we also do not sustain the Examiner's rejection of claim 17 under 35 U.S.C. § 103(a) as unpatentable over Cunningham.

DECISION

We reverse the Examiner's rejections of: claims 1-4, 7, 10, 13, 18-23, 27, and 28 under 35 U.S.C. § 102(b) as anticipated by Gress; claims 1 and 14-16 under 35 U.S.C. § 102(b) as anticipated by Cunningham; and claim 17 under 35 U.S.C. § 103(a) as unpatentable over Cunningham.

REVERSED

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